

Senate Bill No. 496

Passed the Senate September 11, 2013

Secretary of the Senate

Passed the Assembly September 10, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 905.2 and 19683 of, and to add Section 8547.15 to, the Government Code, and to amend Section 1102.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, Wright. Improper governmental activity: disclosure: protection.

(1) The Government Claims Act sets forth the general procedure for the presentation of a claim for money or damages against the state.

This bill would create an exception to the general procedure for a claim alleging a violation of the California Whistleblower Protection Act.

(2) The California Whistleblower Protection Act prohibits acts of reprisal, retaliation, coercion, or similar acts against a state employee or an applicant for state employment who made a protected disclosure relating to an improper governmental activity, as defined. The State Civil Service Act requires the State Personnel Board to initiate a hearing or investigation of a complaint of reprisal or retaliation in violation of the California Whistleblower Protection Act within 10 working days and the executive officer of the board to complete the findings of the hearing or investigation within 60 working days. The State Civil Service Act authorizes the executive officer to consolidate a case with the same or similar allegations to those contained in an appeal and exempts consolidated cases from the time limits for hearings, investigations, and findings.

This bill would modify these requirements to instead require the board to render its decision on the consolidated matter within 6 months of the date of the order of consolidation, as specified. The bill would also make other technical changes.

The act further authorizes the State Auditor to investigate and report whether it finds that a state agency or employee may have engaged or participated in an improper governmental activity. Under the act, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state

employee or applicant for state employment for having made a disclosure that may evidence an improper governmental activity or dangerous condition is subject to, among other things, liability in an action for damages brought against him or her by the injured party. Existing law, the Government Claims Act, sets forth the general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the state, and against the officers, employees, and servants of those entities.

This bill would establish an exception for an action for damages pursuant to the California Whistleblower Protection Act from the claims presentation requirements of the Government Claims Act.

(3) Existing law prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a state or federal rule or regulation. Existing law prohibits any employer from retaliating against an employee for disclosing information to a government or law enforcement agency pursuant to these provisions or for refusing to participate in an activity that would result in a violation of a state or federal statute or noncompliance with a state or federal rule or regulation. Under existing law, an employer who violates these provisions is guilty of a crime.

This bill would expand these provisions to prohibit an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of or noncompliance with a local rule or regulation. The bill would prohibit an employer from retaliating against an employee because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local,

state, or federal rule or regulation. The bill would also prohibit an employer from retaliating against an employee for disclosing, or refusing to participate in an activity that would result in, a violation of or noncompliance with a local rule or regulation.

(4) This bill would incorporate additional changes to Section 1102.5 of the Labor Code proposed by SB 666 and AB 263 that would become operative if this bill and either SB 666 or AB 263, or both, are enacted and this bill is enacted last.

(5) Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 905.2 of the Government Code is amended to read:

905.2. (a) This section shall apply to claims against the state filed with the California Victim Compensation and Government Claims Board.

(b) There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against the state:

(1) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

(2) For which the appropriation made or fund designated is exhausted.

(3) For money or damages on express contract, or for an injury for which the state is liable.

(4) For which settlement is not otherwise provided for by statute or constitutional provision.

(c) Claimants shall pay a filing fee of twenty-five dollars (\$25) for filing a claim described in subdivision (b). This fee shall be deposited into the General Fund and may be appropriated in support

of the board as reimbursements to Item 1870-001-0001 of Section 2.00 of the annual Budget Act.

(1) The fee shall not apply to the following persons:

(A) Persons who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Section 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp Program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Persons whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of California Health and Human Services pursuant to the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended.

(C) Persons who are sentenced to imprisonment in a state prison or confined in a county jail, or who are residents in a state institution and, within 90 days prior to the date the claim is filed, have a balance of one hundred dollars (\$100) or less credited to the inmate's or resident's trust account. A certified copy of the statement of the account shall be submitted.

(2) Any claimant who requests a fee waiver shall attach to the application a signed affidavit requesting the waiver and verification of benefits or income and any other required financial information in support of the request for the waiver.

(3) Notwithstanding any other provision of law, an applicant shall not be entitled to a hearing regarding the denial of a request for a fee waiver.

(d) The time for the board to determine the sufficiency, timeliness, or any other aspect of the claim shall begin when any of the following occur:

(1) The claim is submitted with the filing fee.

(2) The fee waiver is granted.

(3) The filing fee is paid to the board upon the board's denial of the fee waiver request, so long as payment is received within 10 calendar days of the mailing of the notice of the denial.

(e) Upon approval of the claim by the board, the fee shall be reimbursed to the claimant, except that no fee shall be reimbursed

if the approved claim was for the payment of an expired warrant. Reimbursement of the filing fee shall be paid by the state entity against which the approved claim was filed. If the claimant was granted a fee waiver pursuant to this section, the amount of the fee shall be paid by the state entity to the board. The reimbursement to the claimant or the payment to the board shall be made at the time the claim is paid by the state entity, or shall be added to the amount appropriated for the claim in an equity claims bill.

(f) The board may assess a surcharge to the state entity against which the approved claim was filed in an amount not to exceed 15 percent of the total approved claim. The board shall not include the refunded filing fee in the surcharge calculation. This surcharge shall be deposited into the General Fund and may be appropriated in support of the board as reimbursements to Item 1870-001-0001 of Section 2.00 of the annual Budget Act.

(1) The surcharge shall not apply to approved claims to reissue expired warrants.

(2) Upon the request of the board in a form prescribed by the Controller, the Controller shall transfer the surcharges and fees from the state entity's appropriation to the appropriation for the support of the board. However, the board shall not request an amount that shall be submitted for legislative approval pursuant to Section 13928.

(g) The filing fee required by subdivision (c) shall apply to all claims filed after June 30, 2004, or the effective date of this statute. The surcharge authorized by subdivision (f) may be calculated and included in claims paid after June 30, 2004, or the effective date of the statute adding this subdivision.

(h) This section shall not apply to claims made for a violation of the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1 of Title 2).

SEC. 2. Section 8547.15 is added to the Government Code, to read:

8547.15. An action for damages pursuant to this article shall not be subject to the claims presentation requirements of the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1).

SEC. 3. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of conduct prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply. The board shall render its decision on the consolidated matter within a reasonable time after the conclusion of the hearing or investigation, except that the period shall not exceed six months from the date of the order of consolidation unless extended by the board for a period of not more than 45 additional days from the expiration of the six-month period.

(b) If the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) Whenever the board determines that a manager, supervisor, or employee, who is named a party to the retaliation complaint, has violated Section 8547.3 and that violation constitutes legal

cause for discipline under one or more subdivisions of Section 19572, it shall impose a just and proper penalty and cause an entry to that effect to be made in the manager's, supervisor's, or employee's official personnel records.

(e) Whenever the board determines that a manager, supervisor, or employee, who is not named a party to the retaliation complaint, may have engaged in or participated in any act prohibited by Section 8547.3, the board shall notify the manager's, supervisor's, or employee's appointing power of that fact in writing. Within 60 days after receiving the notification, the appointing power shall either serve a notice of adverse action on the manager, supervisor, or employee, or set forth in writing its reasons for not taking adverse action against the manager, supervisor, or employee. The appointing power shall file a copy of the notice of adverse action with the board in accordance with Section 19574. If the appointing power declines to take adverse action against the manager, supervisor, or employee, it shall submit its written reasons for not doing so to the board, which may take adverse action against the manager, supervisor, or employee as provided in Section 19583.5. A manager, supervisor, or employee who is served with a notice of adverse action pursuant to this section may file an appeal with the board in accordance with Section 19575.

(f) In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

SEC. 4. Section 1102.5 of the Labor Code is amended to read:

1102.5. (a) An employer shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, or to a person with authority over the employee or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies that implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

SEC. 4.1. Section 1102.5 of the Labor Code is amended to read:

1102.5. (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying

before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies that implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950) of, or the physician-patient

privilege of Article 6 (commencing with Section 990) of, Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

SEC. 5. Section 4.1 of this bill incorporates amendments to Section 1102.5 of the Labor Code proposed by this bill, Senate Bill 666, and Assembly Bill 263. It shall only become operative if (1) both this bill and either Senate Bill 666 or Assembly Bill 263 are enacted and become effective on or before January 1, 2014, (2) this bill and either Senate Bill 666 or Assembly Bill 263, or both, are enacted to amend Section 1102.5 of the Labor Code, and (3) this bill is enacted after Senate Bill 666 or Assembly Bill 263, or both, in which case Section 4 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2013

Governor